

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

**THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN**

WEDNESDAY, THE 8TH AUGUST 2007 / 17TH SRAVANA 1929

WA.No. 1761 of 2007

(AGAINST THE JUDGEMENT IN WPC.15680/2004 Dated 27/02/2007)

APPELLANT/PETITIONER:

P.V.JINAN,S/O. VELUKKUTTY,
PANAJICKAL HOUSE, CHERAI KARA,
PALLIPPURAM VILLAGE, KOCHI TALUK
RESIDING AT INDIRA ROAD,
PALARIVATTOM,KOCHI-25

BY ADV. SMT.P.V.KOCHUTHRESIA

RESPONDENTS/RESPONDENTS:

1. SPECIAL TAHSILDAR (LR), LAND TRIBUNAL
ERNAKULAM, THRIPPUNITHURA.
2. SMT.N.GANGABAI, W/O. LATE V. RAGHAVA
PRABHU AND D/O. LAKSHMANA PAI, THEKKE CHERALAI,
KIZHAKKENADA, KOCHI THIRUMALA DEVESWOM.
3. SMT. SAROJINI BAI, D/O. LAKSHMANA PAI,
CHENANCHERIL HOUSE, VADAKKUM MURI,CHERTHALA,
C/O. SURESH V. PRABHU, LORD KRISHNA BANK,KALOOR
BRANCH,NEAR PVT. BUS STAND, KOCHI-17.

BY SR. GOVERNMENT PLEADER SMT. R. MEERA.
BY ADV. SRI.S.R.DAYANANDA PRABHU

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION
ON 08/08/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN, J.

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W.A. No. 1761 OF 2007
.....

Dated this the 8th August, 2007

J U D G M E N T

K.T. Sankaran, J:

The appellant/ writ petitioner filed Ext.P1 application dated 18.03.2003 under section 53 of the Kerala Land Reforms Act before the Land Tribunal. (Hereinafter the appellant is referred to as the 'petitioner'.) By Ext.P2 order dated 31.12.2003, the Land Tribunal rejected the application on the ground that the petitioner is not in possession of the property having an extent of 3.75 acres. The petitioner has also filed Ext. P8 application dated 19.06.2003 before the Land Tribunal. The prayer in the Writ Petition filed by the appellant herein is to issue a writ of Certiorari to quash Ext.P2 order and to issue a writ of mandamus directing the first respondent-Special Tahsildar to decide Exts. P1 and P8 applications after taking evidence . The learned single Judge dismissed the Writ Petition .

2. The case of the petitioner is that the property in question, which belonged in jenm to the predecessor in interest of the respondents 2 and 3, was taken on lease by Kochintya, the grand-father of the petitioner in the year 1890. Various subsequent lease deeds were also executed . After the death of Kochintya, his son Velukutty inherited the property . Velukutty died in the year 1968. The petitioner being the son of Velukutty claimed that he is entitled to possess and enjoy the property

3. The Petitioner had filed an application before the Land Tribunal under

section 31 of the Kerala Land Reforms Act for fixation of fair rent. That application was dismissed by the Land Tribunal and the dismissal was confirmed by the appellate authority holding that the petitioner is not a cultivating tenant. The petitioner took up the matter in C.R.P. 1101 of 1973 before this court. The said Revision Petition was dismissed by Ext. R3(a) order dated 29.01.1974, wherein it was held that the petitioner is not a cultivating tenant and that Exts. D21 to D26-"Sookshmakychits" executed in favour of the respondent Nos. 2 and 3 herein, do not constitute any right as that of a cultivating tenant. This Court held thus:

"The decision of the Tribunal as well as of the appellate authority were based on certain documents tendered in evidence by the respondents land owners. They are Exts. D21 to D26. These are "....." executed in favour of the predecessor -in-interest of the respondents by one Velu, the father of the applicants and also by one Narayanan, his maternal uncle. These kychits were all for individual years; and the question raised and decided was whether these kychits confer any sort of right over the applicants. Apart from the provisions contained in these kychits the most significant aspect that cannot be overlooked in this context is that the period for which each of these kychits was executed was for individual year. In other words, the arrangement automatically terminated on the expiry of the stipulated period. The latest of the series of kychits is of the year 1122 and they are EXts. D23 and D25. On going through Ext.D25, it can be found that after the termination of the year the executant received back the initial deposit made by him after settlement of accounts. Thus the transaction stood closed in 1122. Therefore, the documents

produced by the respondents and on which reliance was placed upon by the applicant do not support the applicant's case that he is a cultivating tenant within the meaning of Act 1 of 1964."

4. Between the parties there were five suits before the civil courts , viz.,O.S.Nos. 72 of 1974, 596 of 1970, 64 of 1973, 262 of 1970 and 263 of 1970. Against the decision in O.S.Nos. 262 and 263 of 1970, A.S.Nos. 176 of 1975 and 73 of 1976 were filed before the District Court and the District Court remanded the cases to the trial court for fresh consideration. In O.S.Nos. 596 of 1970 and 64 of 1973 , the question of tenancy was raised and it was contended that it requires reference to the Land Tribunal under section 125 (3) of the Kerala Land Reforms Act. The trial court rejected that contention . The order of remand as well as the orders rejecting the prayer to refer the question of tenancy to the Land Tribunal were the subject matter of two Civil Miscellaneous Appeals and three Civil Revision Petitions before this Court. In Ext.R3 (d) judgment dated 7-2-1977, this court considered the question whether the petitioner herein is entitled to raise the question of tenancy again in view of Ext.R3(a) order in C.R.P.No.1101 of 1973 and it was held thus:

"6. Counsel for the petitioner in C.R.P.No. 5268 of 1976 Shri Easwara Iyer, while admitting the fact that the question of tenancy was decided by a competent Land Tribunal earlier, would contend that he was entitled to put forward the question of tenancy again and the Court below is bound to make a reference since the matter arises after 01.01.1970 and since the tenure put forward is not the same as put

forward before. Reliance was placed upon the Supreme Court ruling reported in 1976 KLT Short Notes 98 overruling a Division Bench ruling of this court in 1976 K.L.T. I am not impressed with this contention. The tenancy put forward by the petitioner in C.R.P. 5272 of 1976 was that the predecessor -in-interest had a lease over the property and this lease was surrendered by him. There after the property was being taken by him year after year on "Sooshma Kychit". A large number of such Kychits were produced. This Court in C.R.P. No. 1101 of 1973 considered the effect of all these "Sooshma Kychits" and held against the tenancy set up. I cannot agree with the contention that the tenancy sought to be put forward now in any way differs from the original tenancy put forward, and therefore such a contention cannot be countenanced at this stage. The contention of the learned counsel for the petitioner in C.R.P. 5268 of 1976 is that whatever be the nature of the lease put forward by the petitioner, the only competent authority to decide it after 01.01.1970 is the Land Tribunal and no Civil Court has jurisdiction to decide this question. But the identical plea was put forward before the Land Tribunal and the same was found against and to say that the said Land Tribunal should be invited to pronounce upon the validity or otherwise of the identical lease is to unnecessarily protract the proceedings and to defeat the interests of the parties concerned and to deny justice to the rightful claimants over the property. This Court in C.R.P. 1101 of 1973 has made it absolutely clear that the tenancy put forward cannot be accepted. It is idle to contend that Land Tribunal can go beyond what this Court has said considering the tenancy put forward by the tenant, and therefore is concluded by the order of this Court. Referring

the matter to the Land Tribunal on a mere technicality will not improve the case of the plaintiff.”

5. Thus by two judgments of this court, the question of tenancy raised by the petitioner was rejected and it has become final. It was also held that the question of tenancy did not really arise for consideration in the two suits, from which the revisions arose. After the question of tenancy was concluded against the petitioner by the decision in C.R.P.No.1101 of 1973 and in Exhibit R3 (d) judgment, Ext.P1 application was filed on 18.03.2003 under section 53 of the Land Reforms Act.

6. Relevant portion of Section 53 and Section 54 of the Kerala Land Reforms Act read thus:

“53. Cultivating tenant's right to purchase landlord's rights:- (1) *A cultivating tenant including the holder of a kudiyiruppu, and the holder of a karaima, entitled to fixity of tenure under Section 13, shall be entitled to purchase the right, title and interest of the landowner and the intermediaries, if any, in respect of the land comprised in his holding:*

54.Application for purchase of landlord's right by cultivating tenants: (1) *A cultivating tenant entitled to purchase the right, title and interest of the landowner and the intermediaries under Section 53 may apply to the Land Tribunal for the purchase of such right, title and interest.*

(2) *The application for the purchase under sub-section (1) shall be in*

such form and shall contain such particulars as may be prescribed.

(3) Where a cultivating tenant is entitled to purchase the right, title and interest in respect of only a portion of the land held by him, he may indicate in the application, his choice of the portion, the right, title and interest over which he desires to purchase.

7. As per section 72 of the Kerala Land Reforms Act, all right, title and interest of the landowners and intermediaries, if any, stood vested in the Government, with effect from 01.01.1970. A cultivating tenant could file an application under section 72B of the Kerala Land Reforms Act for purchase of right, title and interest of the landowners and intermediaries, if any. Proceedings could also be initiated under section 72C of the Act for the grant of purchase certificate in favour of a cultivating tenant. For the sake of convenience relevant portions of Sections 72, 72B and 72C are extracted below:

“72. Vesting of landlord's rights in Government:- (1) *On a date to be notified by the Government in this behalf in the Gazette, all right, title and interest of the landowners and intermediaries in respect of holdings held by cultivating tenants (including holders of kudiyruppus and holders of karaimas) entitled to fixity of tenure under Section 13 and in respect of which certificates of purchase under sub-section (2) of Section 59 have not been issued, shall, subject to the provisions of this section, vest in the Government free from all encumbrances created by the landowners and intermediaries and subsisting thereon on the said date.*

72B. Cultivating tenant's right to assignment:- (1) *The cultivating tenant of any holding or part of a holding, the right, title and interest in respect of which have vested in the Government under Section 72, shall be entitled to assignment of such right, title and interest.*

72C. Assignment where application is not made by cultivating tenant:- *Notwithstanding anything contained in sub-section (3) of Section 72B or Section 72BB, the Land Tribunal may, subject to such rules as may be made by the Government in this behalf, at any time after the vesting of the right, title and interest of the landowners and intermediaries in the Government under Section 72, assign such right, title and interest to the cultivating tenants entitled thereto, and the cultivating tenants shall be bound to accept such assignment. ”*

In view of Section 72 P of the Land Reforms Act, after 01.01.1970, an application filed under section 54 read with Section 53 is not maintainable.

Section 72 P of the Land Reforms Act reads as follows:

“72P . Application under Section 54 and proceedings relating thereto to abate on the date notified under Section 72:-(1) *All applications under Section 54 (other than those which have been rejected and such rejection has become final) and all proceedings in connection therewith, whether pending before the appellate authority or the High Court or the Land Board, shall, if the certificates of purchase have not been issued under sub-section (2) of Section 59, abate with effect from the date notified under sub-section (1) of Section 72, and no party shall be liable to pay the cost of any other party in any such proceedings.*

(2) Where a certificate of purchase is issued under Section 72K in respect of any holding or part thereof to which an application referred to in sub-section (1) relates,-

(a) the right, title and interest of the landowner and intermediaries in respect of such holding or part shall be deemed to have vested in the cultivating tenant from the date of such application;

(b) any amount paid or, deposited by the cultivating tenant by way of rent after the date of such application, shall be adjusted towards the purchase price payable by him under Section 72D;

(c) any such amount received or withdrawn by the landowner or any intermediary shall be adjusted towards the compensation payable to him under Section 72 H and if the amount of compensation payable under that section is not sufficient, the balance shall be adjusted towards the compensation payable to him under Section 72 I; and

(d) any purchase price deposited by the cultivating tenant shall be adjusted towards the purchase price payable by him under Section 72D.

8. Even the application pending on the date of the Kerala Land Reforms (Amendment) Act 35 of 1969 which came into force on 01.01.1970 would abate, in view of Section 72P. In cases where certificates of purchase were not issued under Section 59(2), there would be a vesting under Section 72. Section 59 relates to an application under Section 54. If the vesting under Section 72 occurs, assignment could be made only under Section 72B or Section 72C. In the scheme of the Act involving Sections 72, 72B, 72C and 72P of the Kerala Land Reforms Act, after 01.01.1970, an application

could not be filed under section 53 or 54 for the purpose for which an application could be filed under Section 72 B or a proceeding could be initiated under Section 72C.

9. Section 108 A of the Land Reforms Act was introduced by amendment Act 27 of 1979, which came into force on 07.07.1979. Section 108 A provides that the provisions of Section 11 of the Code of Civil Procedure 1908 shall apply to the proceedings before the Land Tribunal. Even before section 108A was introduced by the amendment Act 27 of 1979, a Full Bench of this Court in **Koran vs. Kamala Shetty (1977 KLT 358)** had taken the view that the general principles of res judicata would apply to the proceedings before the Land Tribunal. The same question was also considered by another Full Bench in **Govindan Gopalan vs. Raman Gopalan (1978 KLT 315)**, and it was held that when the question of tenancy has become final, the same need not be referred to the Land Tribunal under section 125(3) of the Kerala Land Reforms Act. The question of finality of the proceedings before the Land Tribunal was again considered by a Larger Bench of this Court in **Kesava Bhat vs. Subraya Bhat (1979 KLT 766)**, wherein it was held that the question of tenancy which is barred by res judicata need not be referred to the Land Tribunal. In view of these decisions and in view of Section 108A of the Land Reforms Act, the petitioner cannot be heard to contend that the application filed by him claiming rights under section 53 of the Kerala Land Reforms Act is maintainable before the Land Tribunal.

10. Section 2(57) of the Land Reforms Act defines "tenant". The definition of

tenant includes 'kanamdar' and 'verumpattamdar'. Section 2(8) defines "cultivating tenant". By virtue of Section 13 of the Land Reforms Act, all tenants coming under section 2(57) of the Act are entitled to fixity of tenure. Section 72B would enable the cultivating tenants to purchase the right, title and interest of the land owner and intermediaries, if any. Only cultivating tenants could purchase the right, title and interest of the landowner and intermediaries.

11. Learned counsel for the petitioner/appellant submits that the present claim put forward by the petitioner is as a 'kanam tenant'. Learned counsel points out that under section 2(22) of the Land Reforms Act, 'kanam' is defined and the proviso to section 2(22) was deleted by amendment Act 16 of 1976. The proviso reads thus: "Provided that kanam or any other demise governed by the Kanam Tenancy Act, 1955, shall not be deemed to be a kanam for the purposes of this clause." The contention is that by the omission of the proviso to Section 2(22) of the Act, by The Kanam Tenancy Abolition Act, 1976 (Act 16 of 1976), a kanam tenant could again apply to the Land Tribunal for purchase of 'kanam right'. This contention is absolutely unsustainable. It is well settled that if the claim of tenancy is rejected by the Land Tribunal on the merits, the same person cannot apply again before the Land Tribunal claiming tenancy right. The learned counsel contended that the claim now put forward is the claim of kanam right and not verumpattom right and therefore Section 108A would not apply. This contention is also unsustainable. When the Land Tribunal dismisses the application of a person who has put forward a contention that he is a verumpattomdar and entitled for

assignment of the right, title and interest of the landowner in respect of that holding, such a person cannot thereafter file another application claiming that he is a kanamdar. The subsequent application would be barred by res judicata, in view of Section 108A of the Kerala Land Reforms Act. In the present case, the predecessor in interest of the petitioner contended that he was a cultivating tenant on the basis of the lease deeds produced by him before the Land Tribunal. The Land Tribunal held that he was not a cultivating tenant. This Court held in Exhibit R 3 (a) judgment that the "sookshmakachiyts" produced by the predecessor in interest of the petitioner did not entitle him to claim the rights of a cultivating tenant. It was also held that the petitioner's father got back the advance, settled the accounts and closed the transaction in 1122 M.E. The claim made by the predecessor in interest of the petitioner was finally decided against him. He never raised any contention that he had kanom rights. His son, who is the petitioner, cannot now turn round and say that the leasehold right is kanam right. In the light of the finding in Exhibit R 3(a) that the transaction between the parties came to an end, it goes without saying that the predecessor in interest of the petitioner lost possession of the property. The petitioner does not claim any independent title or possession. The petitioner puts forward the claim only on the basis of the lease granted to his grand father. In these circumstances, we are of the view that the claim of tenancy made by the petitioner is barred by res judicata. It is also well settled that a person who has put forward a specific lease is not entitled to put forward a claim that he is a

deemed tenant. In **Kaliyannan V. Narasimha Iyer: 1974 K.L.T. 286**, it was held thus:

“ A person who has set up a specific lease and failed to establish that plea cannot turn round and contend that he should be treated as a deemed tenant under Section 7 of the Act”. This decision was followed in several other decisions as well.

12. The tenancy claim put forward by the petitioner is barred by res judicata, in view of the earlier proceedings mentioned above . The Land Tribunal was justified in rejecting Exhibit P1 application. Ext.P8 application is not liable to be considered in view of the finality reached in the proceedings. The petitioner is not entitled to any reliefs sought for. The learned single Judge was right in dismissing the Writ Petition.

Writ Appeal lacks merit and it is accordingly dismissed.

**H.L. DATTU,
CHIEF JUSTICE.**

**K.T. SANKARAN,
JUDGE.**